



**The State of New Hampshire
Insurance Department**

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Christopher R. Nicolopoulos
Commissioner

David J. Bettencourt
Deputy Commissioner

State of New Hampshire
Insurance Department

In re: Richard A. Bean, Jr.

Docket No.: 20-070-EP

FINAL DECISION and ORDER

Pursuant to the provisions of Ins 207.04, the Proposed Decision and Order issued on April 14, 2021, by Hearing Officer Michelle Heaton is hereby ACCEPTED as a FINAL DECISION and ORDER, with the following MODIFICATIONS:

In Section III, (Legal Analysis and Discussion), of the Proposed Decision and Order, the following modifications have been made:

1. The substance of footnote 65 “Ins 204.05(b)” is not adopted and is replaced with: Ins 206.05(b).
2. On page 9 at the end of the paragraph with a list of citations that ends with “(holding that notice that referred to “unacceptable practices” in amended regulations, rather than those in effect during audit period, did not violate due process)” the following

citation is added at the end of that paragraph: *In re Bloomfield*,
166 N.H. 475, 476 (2014).

3. On page 9 in the sentence that begins with “Notice of Hearing specifically alleged that Respondent violated . . .” that sentence is modified and replaced with:

Notice of Hearing specifically alleged that Respondent violated RSA 402-J:12, I(a) and (b), and RSA 402-J:17, II by failing to report criminal prosecutions.

4. The substance of footnote 72 is modified and replaced with: Hearing Recording at 00:12:48; 00:49:35.

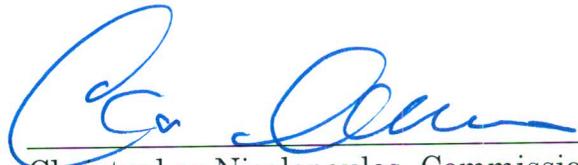
5. On page 11 in the beginning of the page in the first full sentence that begins with “Although the Department only presented a Case Summary . . .” that sentence is modified and replaced with:

Although the Department only presented a Case Summary from the court and did not provide any records from the proceeding, Respondent did not present any evidence regarding this conviction other than his testimony.

This is the final action of the Department. You have the right to appeal by requesting reconsideration of this final action within 30 days in accordance with RSA 541.

SO ORDERED.

6-15-2021
Date


Christopher Nicolopoulos, Commissioner

**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In re: Richard A. Bean, Jr.

Docket No.: INS No. 20-070-EP

PROPOSED DECISION AND ORDER

Appearance for Petitioner:

Richard A. Bean, Jr.

Appearance for Department:

Joshua Hilliard, Esq.
Enforcement Counsel
NH Insurance Department

Hearing Officer:

Michelle Heaton, Esq.
Administrative Hearings Judge
NH Insurance Department

I. Background

Richard A. Bean, Jr. (“Respondent”) is a resident insurance producer licensed to sell life, variable life and annuity, property and casualty, and accident, and health or sickness insurance products.¹ The Insurance Department (“Department”) first issued Respondent a resident producer license in New Hampshire on June 15, 2001.² On October 5, 2020, the Department issued an Order to Show Cause and Notice of Hearing (“Notice of Hearing”) to Respondent in accordance with RSA 400-A:17, II (a) and 402-J:12, III.³ The Department issued an Amended Notice of Hearing on October 21, 2020.⁴ In the Notice of Hearing, the Department alleged that Respondent violated RSA 402-J:12, by failing to report multiple arrests to the Department, failing to disclose criminal convictions and child support arrearage on his license renewal applications, failing to comply with an order imposing a child support obligation,

¹ Ex. 18.

² *Id.*

³ Ex. 1.

⁴ *Id.*

failing to pay for legal services; and failing to respond to the Department's request for further information.⁵

A hearing was held virtually due the COVID-19 State of Emergency using WebEx video conferencing on February 17, 2021. Enforcement Counsel called Respondent and Joan Lacourse to testify. The following exhibits were submitted by the Department and admitted without objection at the hearing:

Department's Exhibits:

- Exhibit 1 – Order to Show Cause and Notice of Hearing; Amended Order to Show Cause
- Exhibit 2 – Notice Information
- Exhibit 3 – Case Summary for Case No. 431-2007-CR-03441
- Exhibit 4 – Criminal Docket, Docket No. 0922CR001149
- Exhibit 5 – November 15, 2010 NH Application of Richard Bean
- Exhibit 6 – November 17, 2012 NH Application of Richard Bean
- Exhibit 7 – Notice of Lien
- Exhibit 8 – August 24, 2020 Release of Lien
- Exhibit 9 – November 6, 2014 NH Application of Richard Bean
- Exhibit 10 – November 15, 2016 NH Application of Richard Bean
- Exhibit 11 – December 10, 2018 NH Application of Richard Bean
- Exhibit 12 – Complaint Case No. 457-2019-CR-538
- Exhibit 13 – Circuit Court Bail Order dated March 3, 2019
- Exhibit 14 – Case Summary for Case No. 473-2019-CR-01640
- Exhibit 15 – SekellaLaw, PLLC attachment
- Exhibit 16 – Welts, White & Fontaine, P.C. attachment
- Exhibit 17 – Complaint 473-2019-CR-1640
- Exhibit 18 – NHID Licensing Information

Respondent was present for the hearing and provided testimony, but did not offer any exhibits or call any witnesses. At the conclusion of the hearing, the record was held open until March 5, 2021, to allow either party to file additional documents. On March 4, 2021, the Department filed additional exhibits and Requested Findings of Fact and Rulings of Law. On March 5, 2021, Respondent contacted the Hearing Clerk and reported that he was experiencing computer issues and requested additional time to submit documents.⁶ The same day, an order was issued allowing Respondent to request an additional

⁵ *Id.* at 10.

⁶ March 5, 2021 Order.

hearing in light of the new evidence submitted by the Department and gave either party until March 19, 2021 to submit any additional documents, arguments, or objections.⁷

On March 18, 2021, Respondent contacted the Hearing Clerk again requesting additional time and stated that he was continuing to have computer issues making it impossible to submit the documents he had compiled.⁸ An order was issued on March 19, 2021, denying Respondent's request.⁹ Respondent contacted the Hearing Clerk again after the order issued renewing his request for an extension.¹⁰

Respondent did not object to the admission of the additional exhibits, request an additional hearing, or submit any additional documents.¹¹ On March 22, 2021, an order was issued admitting the following exhibits submitted by the Department:¹²

- Exhibit 19 – Affidavit of Joan Lacourse
- Exhibit 20 – Case Summary, Case No. 457-2019-CR-01556
- Exhibit 21 – Case Summary, Case No. 438-2019-CR-01144
- Exhibit 22 – Case Summary, Case No. 438-2019-CR-01358
- Exhibit 23 – Case Summary, Case No. 457-2020-CR-02186

The record was closed in the Order.¹³

II. Findings of Fact

Respondent has been an insurance producer since approximately 1990 and currently owns his own business in Bedford, New Hampshire.¹⁴ In August 2007, Respondent was arrested on the misdemeanor charge of disorderly conduct.¹⁵ The case summary, case number 431-2007-CR-03441, indicates that there was a finding of guilty for a class B misdemeanor.¹⁶ Respondent testified that it was his recollection that this charge was “suspended” and that if nothing else happened for a year, it would

⁷ *Id.*

⁸ March 19, 2021 Order.

⁹ *Id.*

¹⁰ Respondent's email from March 19, 2021.

¹¹ *Id.*

¹² March 22, 2021 Order.

¹³ *Id.*

¹⁴ Hearing Recording at 00:09:55.

¹⁵ Ex. 3 at 34.

¹⁶ *Id.*

“go away.”¹⁷ Respondent testified that he did not believe it was a reportable charge and that he thought it was annulled a year later.¹⁸

On June 7, 2009, Respondent was arrested in Massachusetts on charges of operating a motor vehicle under the influence of alcohol and failure to stop/yield.¹⁹ The first pretrial hearing, Docket No. 0922CR001149, was held on July 7, 2009.²⁰ On October 19, 2012, the charges were “Dismissed on recommendation of Probation Dept.”²¹

On November 15, 2010, Respondent submitted his insurance producer renewal application.

Respondent answered, “no” to the following question:

Have you been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime, which has not been previously reported to this insurance department? Note: “Crime” includes misdemeanor, a felony or a military offense. You may exclude misdemeanor traffic citations and misdemeanor convictions or pending misdemeanor charges involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. “Convicted” includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere or no contest, or having been given probation, a suspended sentence or a fine. If you answer yes, you must attach to this application: a) a written statement explaining the circumstances of each incident, b) a copy of the charging document, c) a copy of the official document, which demonstrates the resolution of the charges or any final judgement.²²

Respondent testified that in 2011 he was hospitalized for several weeks for a serious medical condition.²³ He was out of work for approximately six months due to this medical condition.²⁴ Since he was unable to work, he fell behind in his child support payments.²⁵ Respondent petitioned the court to lower his child support obligation, but it took the court some time to adjust his obligation since he was self-employed.²⁶ On March 6, 2012, the Goffstown Family Division Court issued an Order placing an

¹⁷ Hearing Recording at 00:14:18.

¹⁸ Hearing Recording at 01:12:07.

¹⁹ Ex. 4 at 36.

²⁰ *Id.*

²¹ Ex. 4 at 37.

²² Ex. 5.

²³ Hearing Recording at 00:52:10.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

attachment in the amount of \$60,000 on Respondent's property.²⁷ When the lien for the outstanding child support was issued, Respondent stated he was told that he would have to report it to the Insurance Department.²⁸ Respondent stated he called the Department after receiving notice of the lien and was told to mail in a copy, which he stated he did.²⁹

On November 17, 2012, Respondent submitted another renewal application and again answered "no" to the above question regarding criminal convictions.³⁰ Additionally, Respondent also answered "no" to the question "Do you have a child support obligation in arrearage, which has not been previously reported to this insurance department?"³¹

On March 14, 2013, the Division of Child Support Services placed a lien on Respondent's home for child support arrearage.³² As of that date, the arrearage totaled \$70,679.38 and was to continue to accrue at a rate of \$1,500 per month.³³ This lien was not released until August 20, 2020.³⁴

Respondent submitted renewal applications on November 6, 2014, November 15, 2016, and December 10, 2018.³⁵ In each renewal application, Respondent answered "no" to the conviction³⁶ and

²⁷ Ex. 9 at 50.

²⁸ Hearing Recording at 00:52:10.

²⁹ *Id.*

³⁰ Ex. 6.

³¹ *Id.*

³² Ex. 7.

³³ *Id.*

³⁴ Ex. 8.

³⁵ Ex. 9; Ex. 10; and Ex. 11.

³⁶ Starting with the 2014 renewal, the conviction question changed to the following 3 part questions: 1A) Have you been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor, which has not been previously reported to this insurance department? You may exclude the following misdemeanor convictions or pending misdemeanor charges: traffic citations, driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license. You may also exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court); 1B) Have you been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony, which has not been previously reported to this insurance department? You may also exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court); 1C) Have you been convicted of a military offense, had a judgment withheld or deferred, or are you currently charged with committing a military offense, which has not been previously reported to this insurance department? If you answer yes, you must attach to this application: a) a written statement explaining the circumstances of each incident, b) a copy of the charging document, c) a copy of the official document, which demonstrates the resolution of the charges or any final judgement.

child support questions.³⁷ On the 2018 renewal application, the child support question had been changed to “Do you have a child support obligation in arrearage?”³⁸

On March 3, 2019, Respondent was arrested on charges of driving under the influence, Case No. 457-2019-CR-538.³⁹ The Complaint and Bail Order state that he was to be arraigned on March 26, 2019.⁴⁰ No evidence was presented regarding the disposition of the charges or whether a pretrial hearing has been held.

Respondent was arrested again on June 2, 2019, on charges of disorderly conduct,⁴¹ driving after having his license suspended or revoked, and disobeying an officer.⁴² The Case Summary, case number 473-2019-CR-01640, indicates he was arraigned on the charges on July 11, 2019.⁴³ No evidence was presented regarding the disposition of the charges or whether a pretrial hearing has been held.

Respondent was arrested for DUI on July 17, 2019, case number 457-2019-CR-01556.⁴⁴ No pretrial hearing was held prior to the trial on December 5, 2019. At the trial, Respondent pled guilty to DUI Driving while intoxicated a class B misdemeanor.⁴⁵

On September 20, 2019, Respondent was arrested on charges of conduct after an accident, a class A misdemeanor, case number 438-2019-CR-01144.⁴⁶ No pretrial hearing was held prior to Respondent pleading guilty to criminal mischief, a violation, on December 12, 2019.⁴⁷

Respondent was arrested on charges of driving after a license suspension/revocation, a violation, on October 15, 2019, case number 438-2019-CR-01358.⁴⁸ A pretrial conference was held on January 22, 2020, and a notice of default was issued on December 9, 2020.⁴⁹

³⁷ Ex. 9; Ex. 10; and Ex. 11.

³⁸ Ex. 11.

³⁹ Ex. 12.

⁴⁰ Ex. 12 and 13.

⁴¹ The disorderly conduct was charged as a violation.

⁴² Ex. 14; Ex. 17

⁴³ Ex. 14.

⁴⁴ Ex. 20.

⁴⁵ Ex. 20.

⁴⁶ Ex. 21.

⁴⁷ Ex. 21.

⁴⁸ Ex. 22.

⁴⁹ Ex. 22.

Respondent testified that he had recently filed a renewal application in 2020 and answered “no” to the convictions and child support questions as he had with prior applications.⁵⁰ Respondent testified that he answered “no” to the conviction questions because they were traffic and DUI related and the application specifically excluded these charges.⁵¹ With respect to the child support questions, Respondent testified that he answered, “no” because the question only asked about arrearages not already reported and he had previously reported the arrearage.⁵²

There is no documentation in the Producer Licensing Unit’s electronic records indicating Respondent reported any of his arrests, convictions, or the child support arrearage.⁵³ Ms. Lacourse testified that back in 2013, if the Department had received documents in the mail from a producer, the documents may not have been scanned and uploaded into the producer’s electronic file. Even if the document was not scanned and uploaded, the electronic file should have noted that a document was received.⁵⁴ Any documents that may have been in Respondent’s paper file from 2013 and prior have since been destroyed.⁵⁵

On or about June 15, 2020 a lien was placed on Respondent’s home for a small claims judgment.⁵⁶ On December 5, 2019, Respondent agreed to an attorney’s lien for unpaid legal fees associated with his divorce.⁵⁷ On July 29, 2020, an order attaching Respondent’s property was granted relating to the attorney’s lien.⁵⁸ Respondent reported that he sold his house in August 2020 and used the proceeds of the sale to clear all of the liens.⁵⁹

⁵⁰ Hearing recording at 01:12:07.

⁵¹ Hearing Recording at 01:32:20.

⁵² *Id.* at 00:54:13.

⁵³ Ex. 18.

⁵⁴ Hearing Recording at 01:20:00.

⁵⁵ Ex. 19.

⁵⁶ Ex. 15.

⁵⁷ Ex. 16.

⁵⁸ *Id.*

⁵⁹ Hearing Recording at 00:54:22, 01:02:03, and 01:05:40.

On or about September 3, 2020, the Enforcement Unit emailed Respondent seeking a meeting to discuss Respondent's prior convictions.⁶⁰ Respondent did not respond to this request.⁶¹ Respondent stated he did not recall receiving this email and does not regularly conduct business through email.⁶²

On October 8, 2020, Respondent was arrested for driving after revocation/suspension, operating a vehicle without an interlock, suspension of vehicle registration, driving without giving proof, and having an open container.⁶³ A case status hearing, case number 457-2020-CR-02186, on these charges was scheduled for March 11, 2021.⁶⁴

III. Legal Analysis and Discussion

In hearings where the Department seeks to revoke an insurance producer's license, as here, the Department bears the initial burden of presenting prima facie evidence to demonstrate by a preponderance of evidence that the licensee engaged in the alleged violation.⁶⁵ The Respondent then has the burden of presenting evidence to persuade the hearing officer that the Department's position should not be upheld.⁶⁶

Criminal Prosecutions

As an insurance producer, Respondent is bound by the provisions of RSA 402-J.⁶⁷ RSA 402-J:12 allows the commissioner to impose a penalty against a producer for "violating any insurance laws, or violating any rule, regulation, subpoena, or order of the commissioner or of another state's insurance commissioner."⁶⁸ Producers are required to report to the Department any criminal prosecution of the producer taken in any jurisdiction" within 30 days of the initial pretrial hearing date and must include a copy of the order or any relevant legal documents.⁶⁹ Additionally, producers are asked about criminal

⁶⁰ Ex. 1 at 9; Hearing Recording at 00:40:17.

⁶¹ Ex. 1. At 9.

⁶² Hearing Recording at 00:41:12

⁶³ Ex. 23.

⁶⁴ Ex. 23.

⁶⁵ Ins 204.05 (b).

⁶⁶ *Id.*

⁶⁷ RSA 402-J:1.

⁶⁸ RSA 402-J:12, I (b).

⁶⁹ RSA 402-J:17, II.

prosecutions on their renewal applications. A producer violates insurance laws by “[p]roviding incorrect, misleading, incomplete, or materially untrue information in the license application.”⁷⁰

Although the Notice of Hearing did not reference four of Respondent’s arrests, in light of all relevant circumstances, Respondent did have adequate notice of the basis for the administrative action and was not prejudiced by the inclusion of the additional evidence. The New Hampshire Supreme Court has explained:

The notice required in an administrative proceeding does not require the same formality, specificity, and detail that is required in a criminal proceeding. *See Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972) (“It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for such procedural protections as the particular situation demands.”); cf. *Bourie v. Department of Higher Educ.*, 929 P.2d 18, 22 (Colo. Ct. App. 1996) (due process did not require employee in disciplinary hearing to receive reports, statements of witnesses or other evidence prior to pre-disciplinary meeting); *McClellan v. Bd. of Regents of State*, 921 S.W.2d 684, 688 (Tenn. 1996) (due process did not require citation to specified regulations in the notice of the administrative hearing). The charges need only be reasonably specific, in light of all the relevant circumstances, apprise the party who is the subject of the hearing of the grounds for the administrative action and to allow for the preparation of an adequate defense. *See Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”); cf. *Appeal of N.H. Fireworks*, 151 N.H. 335, 338, 856 A.2d 725 (2004) (under State Constitution, “[a] fundamental requirement of the constitutional right to be heard is notice of the impending action that affords the party an opportunity to protect [a legally protected interest] through the presentation of objections and evidence” (quotation omitted)); *Garofalo v. Dowling*, 223 A.D.2d 770, 635 N.Y.S.2d 986, 989 (App. Div. 1996) (holding that notice that referred to “unacceptable practices” in amended regulations, rather than those in effect during audit period, did not violate due process).

The Notice of Hearing specifically alleged that Respondent violated RSA 402-J: 12, I (a) and (b), and RSA 402-J:17, I by failing to report criminal prosecutions. Additionally, Respondent was provided with the opportunity to request an additional hearing and the record was left open for an additional 14 days following the supplemental filing to provide either party with additional time to submit further evidence or argument. Respondent did not request an additional hearing and failed to submit any additional evidence, argument or objections despite having many opportunities to do so.

⁷⁰ RSA 402-J:12, I (a).

There is insufficient evidence to support a finding that Respondent violated RSA 402-J:12, I(a) by failing to report the criminal proceedings on his renewal applications. The renewal application specifically instructed applicants to “exclude misdemeanor traffic citations and misdemeanor convictions or pending misdemeanor charges involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license.” All of Respondent’s arrests, except the 2007 disorderly conduct arrest, related to traffic incidents. Additionally, some of the charged offenses were only violations and not crimes.⁷¹

With respect to case number 431-2007-CR-03441, a finding of guilt was entered on November 19, 2007. Respondent would have had to disclose this conviction on his 2008 renewal application. However, the Department did not present any evidence with respect to Respondent’s 2008 renewal application.

Although Respondent was not required to disclose the driving offenses on his renewal application, he was required to report any criminal prosecution taken against him in any jurisdiction in accordance with RSA 402-J:17, II. Respondent violated RSA 402-J:12, I (b) and RSA 402-J:17, II by failing to report to the Department the criminal proceedings for Massachusetts Docket No. 0922CR001149 and New Hampshire case numbers 431-2007-CR-03441 and 457-2019-CR-01556. Each of these arrests involved criminal charges. For each of these proceedings, Respondent was required to report the prosecution within 30 days of the pretrial conference and admittedly failed to do so.

In case number 431-2007-CR-03441, the case summary indicates there was no pretrial conference, but there was a trial and a guilty conviction for a class B misdemeanor entered on November 19, 2007. Respondent asserts his conviction for this offense was a violation and not a misdemeanor,⁷² but he presented no evidence to support this claim. The standard of proof only requires the Department to present a prima facie case before the burden shifts to Respondent “to convince the hearing officer that the

⁷¹ RSA 625:9, II (b).

⁷² Hearing Recording at 00:12:48.

department's position should not be upheld."⁷³ Although the Department only presented a Case Summary from the court and did not provide any records from the proceeding, Respondent did not present any evidence regarding this conviction other than is testimony. I found Respondent to be genuine in his testimony, but his testimony suggested he might have misunderstood the legal consequences of the 2007 proceeding. Without any other evidence to consider on this issue, Respondent failed to convince me that the Department's position was inaccurate and should not be upheld.

With respect to the 2009 arrest in Massachusetts, Respondent was required to report the criminal prosecution within 30 days of the pretrial conference held on July 7, 2009 and failed to do so. Although the charges in this proceeding were later dismissed, there was an active criminal prosecution pending at the time of the pretrial conference, when the duty to report the criminal prosecution was triggered.

For case number 457-2019-CR-01556, no pretrial hearing was held but Respondent pled guilty to a misdemeanor on December 5, 2019. He was required to report this criminal conviction to the Department within 30 days and failed to do so.

Respondent did not violate RSA 402-J:17, II when he failed to report the proceedings for case numbers 457-2019-CR-538, 473-2019-CR-01640, 438-2019-CR-01144, 438-2019-CR-01358, and 457-2020-CR-02186. RSA 402-J:17, II requires a producer to report a criminal prosecution "[w]ithin 30 days of the initial pretrial hearing date." If there has not yet been a pretrial hearing or a final disposition, the producer does not yet have a duty to report the proceeding. Additionally, violation level offenses are not considered criminal acts.⁷⁴ Therefore, a prosecution or conviction for a violation level offense, is not a criminal prosecution that would need to be reported in accordance with RSA 402-J:17.

In case number 438-2019-CR-01144, Respondent was initially charged with a misdemeanor, but later pled guilty to a violation.⁷⁵ Since there was no pretrial hearing, his duty to report did not arise until after the trial at which point the offense was a violation. Case number 438-2019-CR-01358 involved only

⁷³ Ins 206.05 (b).

⁷⁴ RSA 625:9, II (b).

⁷⁵ Ex. 21.

violation level offenses. Therefore, Respondent had no obligation to report this conviction to the Department.

The charges from case numbers 457-2019-CR-538, 473-2019-CR-01640, 457-2020-CR-02186 are all still pending and there was no evidence presented to demonstrate a pretrial hearing has been held in any of these cases. Respondent has no duty to report these criminal prosecutions until after the pretrial hearing. A pretrial conference had been scheduled in Case No. 457-2020-CR-02186, but no evidence was presented indicating this conference ever occurred. Even if it has occurred, Respondent would have until April 11, 2021, to report this prosecution.

It is worth noting that although Respondent was required to report criminal prosecutions in accordance with RSA 402-J:17, II, the underlying conduct itself and any resulting convictions do not violate any insurance laws. Furthermore, given the language on the renewal application with respect to criminal proceedings, it is understandable that there could have been some confusion regarding what types of offenses need to be reported to the Department. Ultimately, it is the producer's responsibility to be aware of the regulations and seek clarification if there is any confusion. There is no evidence in the record that Respondent sought any clarification from the Department on this issue. It is recommended that the Commissioner impose an administrative fine in the amount of \$100 for each of Respondent's three failures to report a criminal prosecution as detailed above.

Child Support Obligation

The Commissioner may take regulatory action against a producer for “[f]ailing to comply with an administrative or court order imposing a child support obligation.”⁷⁶ It is undisputed that Respondent had a child support obligation in arrears for at least 7 years in violation of RSA 402-J:12, I (m). The underlying circumstances leading to the child support arrearage are irrelevant to whether a violation occurred.

⁷⁶ RSA 402-J:12, I (m).

With respect to the reporting of the child support arrearage on this renewal applications, there is insufficient evidence to suggest that Respondent violated RSA 402-J:12, I (a) by failing to accurately answer the child support question on his 2012, 2014, or 2016 license renewal applications. Respondent claims that he answered “no” because he had already notified the Department when he mailed in a copy of the notice of lien. Since any paper records from prior to 2013 have been destroyed, there is insufficient evidence to prove Respondent did not report the child support arrearage in 2012 when he received the first notice of lien.

Respondent did fail to respond accurately to the child support question on his 2018 renewal application in violation of RSA 402-J:12, I(a). In 2018, the child support question changed and asked only whether the applicant had any child support obligation in arrearage. Respondent answered “no” despite still having an unpaid child support obligation.

It is recommended that the Commissioner suspend Respondent’s producer license for a period of 7 days for violating RSA 402-J:12, I (m) and for failing to provide correct information on his 2018 renewal application. An administrative fine is not recommended for these violations as the underlying arrearage resulted from an inability to pay the obligation due to income loss following a serious medical condition.

Financial Irresponsibility in the Conduct of Business

The Commissioner may take action against a producer for “Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.”⁷⁷ It is alleged that Respondent engaged in financial irresponsibility in the conduct of business by failing to pay legal fees, which resulted in liens being placed on his property. The legal fees in question related to Respondent’s contentious divorce. Respondent reported that due to the contentious nature of his divorce, he ran out of money and could no longer pay his legal fees. The outstanding legal fees were paid when Respondent sold his house.

⁷⁷ RSA 402-J:12, I(h).

Merriam-Webster defines “business” as “a usually commercial or mercantile activity engaged in as a means of livelihood; a commercial or sometimes an industrial enterprise; or dealings or transactions especially of an economic nature.”⁷⁸ Since the legal fees related to a personal legal matter, it is not clear that Respondent’s financial troubles arose “in the conduct of business.” Furthermore, Respondent’s inability to pay necessary legal fees does not itself equate to financial irresponsibility. For these reasons, there was insufficient evidence presented to demonstrate Respondent engaged in financial irresponsibility in the conduct of business in violation of RSA 402-J:12, (h).

Failure to Respond

Licensed producers are required to provide the commissioner with all relevant documents and information relating to an investigation within 10 working days of a request.⁷⁹ There is insufficient evidence to support a finding that Respondent violated RSA 400-A:16, II by failing to respond to the Enforcement Unit’s September 3, 2020 email. Respondent did confirm that the email address used by the Department was his email address, but he denied receiving any notices through email. RSA 400-A:14 provides that a notice or order of the commissioner may be given by mail to the individual’s “principal place of business or residence as last of record in the department.”⁸⁰ Such order or notice is deemed given once deposited in the mail.⁸¹ The Enforcement Unit’s request was only made through a single email that Respondent denies receiving. There is no evidence indicating the request was mailed, therefore there is insufficient evidence to demonstrate that Respondent had notice of the request.

All requested findings of fact and rulings of law consistent with this order are granted and all others are denied.

IV. Conclusion

Based on the foregoing, I propose that Respondent’s producer license be suspended for a period of 7 days and an administrative fine of \$300 be assessed as a result of the violations detailed above. I do

⁷⁸ *Business*, Merriam-Webster. <https://www.merriam-webster.com/dictionary>

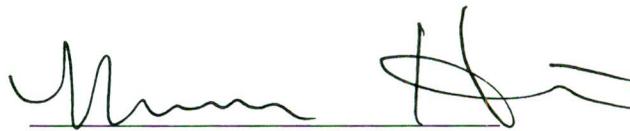
⁷⁹ RSA 400-A:16, II.

⁸⁰ RSA 400-A:14, I(c).

⁸¹ *Id.*

not believe revocation of Respondent's license is appropriate. The violations stem from issues in Respondent's personal life and there was no evidence presented to suggest his professional life or his clients were negatively impacted by his conduct. Although Respondent did fail to accurately report criminal proceedings to the Department, his explanation for the failure, though faulty, was a plausible misunderstanding of his reporting obligations. Revocation would also be an inappropriate penalty for failing to pay child support. Respondent reported that he fell behind in his child support obligation due to financial difficulties. Revocation of his producer license would take away his livelihood and would only further exacerbate his financial difficulties.

Date: 4/14/2021


Michelle Heaton, Hearing Officer